

Nicholas A. Kurtz (SBN 232705)  
[nkurtz@dglegal.com](mailto:nkurtz@dglegal.com)  
DUNLAP, GRUBB & WEAVER, PLLC  
199 Liberty St., SW  
Leesburg, Virginia 90210  
Telephone: (703) 777-7319  
Facsimile: (703) 777-3656

Attorneys for Plaintiff,  
Jake Mandeville-Anthony

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

JAKE MANDEVILLE-ANTHONY,  
an individual,

Plaintiff,

v.

THE WALT DISNEY COMPANY;  
WALT DISNEY PICTURES;  
DISNEY ENTERPRISES, INC.;  
PIXAR d/b/a PIXAR ANIMATION  
STUDIOS; and DOES 1 - 10,  
inclusive,

Defendants.

CASE NO.: CV 11-2137-VBF(JEMx)

Judge: Honorable Valerie Baker Fairbank

**REPLY MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR LEAVE  
TO TAKE DISCOVERY PRIOR TO  
RULE 26(F) CONFERENCE OR, IN  
THE ALTERNATIVE, FOR A  
HEARING ON SUCH A MOTION ON  
AN EXPEDITED BASIS**

[Notice of Motion and Motion; [Proposed]  
Order; Declaration of Nicholas A. Kurtz  
filed concurrently herewith]

Date: June 6, 2011

Time: 1:30 p.m.

Hon. Valerie Baker Fairbank  
312 N. Spring St., Courtroom 9  
Los Angeles, California 90012

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Defendants' view of this case and Plaintiff's motion for expedited discovery skews far from reality. Defendants attempt to paint a picture of ultimate catastrophe should their film and script fall into the "wrong hands." Defendants also attempt to state that not even the secret script or storyline of "Cars 2" can be divulged unless it is in accordance with their marketing strategy.

What is conveniently missing from Defendants' opposition is the fact that Defendants' "Cars 2" is an animated film targeted to children. It is not a sophisticated suspense drama or thriller in the sense that the plot carries the movie. Especially when it comes to the screenplay/script, Defendants have not provided any substance to their concerns of commercial secrecy and threats of piracy. Defendants have not identified any black market for movie scripts, any history of pirating of movie scripts, or any conceivable motivation for anyone to steal and reproduce the script for public consumption.

Instead of explaining how a copy of their film would fall into the "wrong hands,"<sup>1</sup> Defendants attack Plaintiff's timing of his motion and the substance of Plaintiff's claims.<sup>2</sup> These arguments are mere smokescreens designed to distract

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<sup>1</sup> Defendants seem to acknowledge that they have no reason to believe Plaintiff, Plaintiff's counsel, or the Court have any intention of copying, pirating, or otherwise distributing "Cars 2" to the public.

<sup>2</sup> Defendants continually insert remarks that Plaintiff's and Defendants' works are "completely dissimilar" and are "nothing alike." However, Defendants concede that their "Cars" works and Plaintiff's "Cars" both revolve around anthropomorphic car characters living in a world with no humans, a creative concept that Defendants themselves stated had never been done before. Compare Opposition at 3:11-13 with Complaint at ¶ 21. Additionally, if the works are that dissimilar, it seems Defendants would be eager to have Plaintiff and his counsel view "Cars 2" so that they could see the dissimilarity for themselves.

1 from the inevitable truth – there is no real threat that producing a copy of their film  
2 and screenplay/script to Plaintiff will result in any harm to Defendants. Therefore,  
3 the Court should order Defendants to Defendants to immediately produce the  
4 screenplay/script and an audio-visual copy of Defendants’ “Cars 2.”  
5

## 6 **II. ARGUMENT**

### 7 A. Defendants have not refuted Plaintiff’s need for the expedited 8 discovery.

9 Defendants have not refuted that the requested discovery is necessary for  
10 Plaintiff to bring a preliminary injunction application. Further, Defendants have  
11 not refuted that the requested discovery is relevant and narrowly tailored for  
12 Plaintiff’s needs. In fact, Defendants’ offer to allow Plaintiff and his counsel to  
13 view “Cars 2” before its theatrical release concedes that Plaintiff has demonstrated  
14 an adequate need for the requested discovery.  
15

### 16 B. Defendants’ last ditch offer and comments on Plaintiff’s tactics are 17 irrelevant.

18 As a last minute effort to make themselves appear accommodating,  
19 Defendants offered Plaintiff and his counsel an opportunity to view the film at  
20 Defendants’ location and Plaintiff’s expense. Defendants knew that Plaintiff’s  
21 counsel is located thousands of miles away and that Plaintiff resides even farther  
22 away. Surely Defendants knew that such a proposal would be unacceptable.

23 Even if Plaintiff accepted Defendants’ proposal, Defendants still do not  
24 explain how Plaintiff could submit any evidence regarding “Cars 2” in a  
25 preliminary injunction application. Apparently Defendants are suggesting that  
26 Plaintiff and his counsel would have to submit notes and sketches from “Cars 2”  
27  
28

1 based on their memory.<sup>3</sup> Even if Plaintiff and his counsel were able to do that,  
 2 Defendants would undoubtedly argue that the characterization of “Cars 2” is not  
 3 accurate.

4 Additionally, Defendants criticize Plaintiff for his choice of counsel, forum,  
 5 and timing. Had Plaintiff filed in any other jurisdiction other than this one,  
 6 Defendants would undoubtedly have made a motion to transfer venue. In the end,  
 7 merely because Plaintiff chose this Court for this case does not somehow subject  
 8 him to the whims of Defendants.<sup>4</sup>

9 Lastly, Defendants also state that it is inconsistent for Plaintiff to argue he  
 10 needs access to “Cars 2” for a preliminary injunction application because Plaintiff  
 11 alleged infringement of his works by “Cars 2” based on the publicly available  
 12 information about the movie. That defies logic. Defendants know that a higher  
 13 standard applies for Plaintiff to prevail on a preliminary injunction application than  
 14 adequately alleging a claim for infringement in a complaint on information and  
 15 belief.

16 In fact, Defendants are quick to point out the standard on a preliminary  
 17 injunction motion and criticize Plaintiff’s authority on the issue. Defendants  
 18 contend that “Plaintiff’s discussion of a ‘presumption’ of irreparable harm in the  
 19

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20 <sup>3</sup> Defendants state that Plaintiff and his counsel could view “Cars 2” as many times  
 21 as they want. However, viewing the film and screenplay/script a few times, at  
 22 Defendants’ location, with Defendants’ personnel peering over Plaintiff and his  
 23 counsel’s shoulders, and without any ability to document any part of the film, does  
 24 not provide Plaintiff and his counsel the opportunity to adequately review the works  
 for substantial similarities and present that evidence to the Court.

25 <sup>4</sup> Defendants’ counsel’s statements about the details of the U.K. action are not only  
 26 irrelevant but are legally questionable, as the proceedings of that case are sealed  
 27 pursuant to U.K. law. Notwithstanding, contrary to Defendants’ implications, the  
 28 U.K. action was not dismissed by the court on the merits. Rather, the parties  
 consented to dismissal as part of a settlement.

1 preliminary injunction context is premised on outdated authority.” Opp. at 6:19-20  
2 (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7129 S. Ct.  
3 365 (2008)). However, Defendants’ argument on this issue is not completely  
4 accurate.

5 In at least one instance, the Ninth Circuit has reaffirmed and continued to  
6 presume irreparable harm upon a showing of a likelihood of success on the merits.  
7 See *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 877  
8 (9th Cir. 2009) (stating that irreparable injury may be presumed from a showing of  
9 likelihood of success on the merits in a trademark infringement case, post *Winter*).  
10 Further, on at least one occasion, this Court has reaffirmed and continued to  
11 presume irreparable harm upon a showing of a likelihood of success on the merits,  
12 post *Winter*, in a copyright action. See *Summit Entertainment, LLC v. Beckett*  
13 *Media, LLC*, 2010 WL 147958 \*4 (C.D. Cal. January 12, 2010) (Hon. Philip S.  
14 Gutierrez) (“In copyright and trademark infringement actions, irreparable injury is  
15 presumed upon a showing of likelihood of success on the merits.”).

16 Defendants state that “Plaintiff’s Motion contains a long discussion of the  
17 harm he might face if a preliminary injunction motion were denied.” Opposition at  
18 6:16-17. This inaccurately summarizes Plaintiff’s motion and is again misleading.  
19 The harm Plaintiff argued was not whether a preliminary injunction motion would  
20 ultimately be granted or denied. Rather, the harm would be to Plaintiff’s ability to  
21 bring a preliminary injunction application at all.

22 Further, Defendants claim that such a discussion “has nothing to do with this  
23 Motion and any harm caused by not immediately having his own copy of *Cars 2*.”  
24 Opposition at 6:17-19. Nothing could be further from the truth. Because Plaintiff  
25 cannot bring a preliminary injunction motion without it, Plaintiff has an absolute  
26 need for a copy of “*Cars 2*.” As stated in the motion, “[w]ithout the discovery,  
27 Plaintiff will be denied that opportunity forever, potentially risking the irreparable  
28 harm that a preliminary injunction is intended to prevent.” Motion at 6:21-7:2.

1 C. Defendants have not shown any actual prejudice.

2 Defendants' opposition demonstrates that Defendants will not suffer actual  
3 prejudice by producing "Cars 2" to Plaintiff, only a feared prejudice. Defendants  
4 use the terms "threatens severe and irreparable harm" (Opp. at 7:9) and "serious  
5 threat of irreparable harm" (Opp. at 8:17). That is not actual prejudice.

6 Despite Defendants' catastrophic outlook of what would happen if a copy of  
7 "Cars 2" got into the "wrong hands," Defendants simply have not articulated how  
8 the likelihood of this type of "accident" exists or increases by giving Plaintiff a  
9 copy of "Cars 2" before its theatrical release. Further, Defendants have failed to  
10 address how "technological safeguards and anti-piracy measures," which they  
11 conceded already exist, would not alleviate Defendants' concerns.<sup>5</sup> [Doc. No. 11 at  
12 3:8-11]

13 In regards to the screenplay/script, Defendants have not provided any  
14 substance to their concerns of commercial secrecy and threats of piracy.  
15 Defendants have not identified any black market for movie scripts, any history of  
16 pirating of movie scripts, or any conceivable motivation for anyone to steal and  
17 reproduce the script for public consumption.

18 The only legal authority cited by Defendants was *Kimble v. Rock*, 2009 WL  
19 3248208 (C.D. Cal. Oct. 8, 2009). However, there the issue was narrower –  
20 whether the plaintiff's *expert* could have access to a film before its national  
21 theatrical release. See id. at \*4.<sup>6</sup> In fact, there the Court granted the plaintiff's  
22 request for expedited discovery even though it had already done an analysis of  
23

24 \_\_\_\_\_  
25 <sup>5</sup> Again, Defendants do not explain how "technological safeguards and anti-piracy  
26 measures" would differ between now and after "Cars 2" is released publicly.

27 <sup>6</sup> There, the plaintiff only asked that her expert be given access to the film, as she  
28 and her counsel had already viewed the film at issue. See *Kimble v. Rock*, Case  
2:09-cv-07249-DSF-E, Doc. No. 20 at 25:8-12.

1 substantial similarities and found that the plaintiff was unlikely to show she was  
2 entitled to a preliminary injunction. *Id.* at \*4.

3 On the other hand, it is quite telling that Defendants did not even address the  
4 central holding of *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273 (N.D.  
5 Cal. 2002). There, the Court dealt with commercially sensitive and proprietary  
6 documents of the defendants, such as “technical specifications, schematics,  
7 maintenance manuals, user or operating manuals.” 208 F.R.D. at 276. The court  
8 granted plaintiff’s request for expedited discovery without limitation and on a basis  
9 much less necessary than here – “substantially contribute to moving th[e] case  
10 forward.” *Semitoool*, 208 F.R.D. at 277.

11 Overall, Defendants’ concerns are not based on any reality in this situation.  
12 Rather, they are unsubstantiated speculation. Therefore, Plaintiff respectfully  
13 requests that the Court order Defendants to immediately produce the  
14 screenplay/script and an audio-visual copy of Defendants’ “Cars 2.”  
15

16 D. Defendants’ argument that Plaintiff’s counsel did not meet and confer  
17 in good faith is unsupported.

18 Defendants’ claim that Plaintiff’s counsel did not meet and confer in good  
19 faith again conveniently gives only part of the story. While they gloss over the  
20 events, Defendants themselves show that their counsel and Plaintiff’s counsel had a  
21 number of conversations about the central issue of this motion – whether  
22 Defendants would produce a copy of “Cars 2” before its theatrical release.

23 Defendants’ opposition even states that Plaintiff’s counsel requested a copy  
24 of “Cars 2” the week prior to Plaintiff filing his motion. Opposition at 4:9-11.  
25 Amazingly absent from Defendants’ retelling of counsel’s conversations is any  
26 mention of Defendants’ motion for an extension, which was denied by the Court.  
27 Defendants’ motion was based on the same issue as Plaintiff’s motion –  
28 Defendants’ willingness to produce a copy of “Cars 2” before its theatrical release.



1 This is most telling in that Defendants' motion for extension never  
 2 mentioned the possibility that Plaintiff could view "Cars 2" before its theatrical  
 3 release. Had Defendants truly seen that offer as a possible resolution of the issues,  
 4 they would have presented it at the outset. The truth is that Defendants only  
 5 presented the offer after Plaintiff was forced to file his motion.

6 Also absent from Defendants' opposition is any explanation of Defendants'  
 7 counsel's actions. Again, the Declaration of David R. Singer in support of  
 8 Defendants' application for extension (Doc. No. 11 at pp. 6-10) states that at the  
 9 time of filing Defendants' application, Defendants' counsel had not received a  
 10 responsive email from Plaintiff's counsel. [*Id.* at 8:2-3] While it is unclear what  
 11 time Defendants filed their application, it should be noted that Plaintiff's counsel  
 12 sent a responsive email at 3:05 p.m. CST on May 4, 2011 (the day Defendants filed  
 13 their application), and Defendants' counsel responded shortly thereafter: "Thanks  
 14 for getting back to me. I will call you tomorrow to discuss." Doc. No. 14-2 (Kurtz  
 15 Decl.), ¶ 5, Ex. 1. Either (1) Defendants had not yet filed their application, and  
 16 consequently the Declaration of David R. Singer is inaccurate, or (2) Defendants  
 17 had filed their application, and consequently Defendants' counsel intentionally  
 18 failed to mention the fact.

19 Lastly, Defendants' counsel cannot truly be surprised that Plaintiff's counsel  
 20 was busy after having received Defendants' application for an extension.<sup>7</sup>  
 21 Defendants' application was presented in an *ex parte* manner, requiring immediate  
 22

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23 <sup>7</sup> Defendants point to the fact that Plaintiff's motion was filed a few hours after  
 24 Plaintiff's counsel stated he was busy. Again, because nearly identical issues were  
 25 presented in opposing Defendants' application and in making Plaintiff's motion,  
 26 Plaintiff's counsel was able to use similar arguments in Plaintiff's motion as in  
 27 opposition to Defendants' application. Further, instead of proceeding on an *ex*  
 28 *parte* basis like Defendants, Plaintiff has proceed according to the Court's normal  
 briefing and hearing schedule, obviously necessitating the prompt filing of  
 Plaintiff's motion.



1 attention by Plaintiff's counsel. Further, Defendants' counsel could have presented  
2 Defendants' proposal in a simple email, but chose not to.

3 Overall, it is undisputed that the parties' counsel had a number of  
4 conversations about the issue that is the subject of Plaintiff's motion. By making  
5 their application, Defendants necessitated Plaintiff's motion. Therefore, it is  
6 disingenuous for Defendants to claim Plaintiff's counsel did not meet and confer in  
7 good faith.

### 8 9 **III. CONCLUSION**

10 For all of the foregoing reasons, the Court should order Defendants to  
11 produce immediately the screenplay/script and an audio-visual copy of Defendants'  
12 "Cars 2." In the alternative, the Court should order that Defendants at least produce  
13 the screenplay/script before the theatrical release of the film. Defendants have not  
14 shown any real, actualized prejudice they would incur if they were forced to  
15 produce the film. On the other hand, Plaintiff has shown a justified need for the  
16 film and actual harm if he does not receive a copy.

17  
18 DATED: May 23, 2011

DUNLAP, GRUBB & WEAVER, PLLC

19  
20 By: /s/ Nick Kurtz  
21 Nicholas A. Kurtz  
22 Attorneys for Plaintiff,  
23 Jake Mandeville-Anthony  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 23, 2011, I electronically filed the foregoing  
REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR LEAVE TO TAKE DISCOVERY PRIOR TO  
RULE 26(F) CONFERENCE OR, IN THE ALTERNATIVE, FOR A HEARING  
ON SUCH A MOTION ON AN EXPEDITED BASIS with the Clerk of the Court  
using the CM/ECF system which will send notification of such filing to the  
following:

David R. Singer  
Hogan Lovells US LLP  
[david.singer@hoganlovells.com](mailto:david.singer@hoganlovells.com)

Sanford M. Litvack  
Hogan Lovells US LLP  
[sandy.litvack@hoganlovells.com](mailto:sandy.litvack@hoganlovells.com)

*Attorneys for Defendants  
The Walt Disney Company,  
Walt Disney Pictures,  
Disney Enterprises, Inc., and  
Pixar d/b/a Pixar Animation Studios*

/s/ Nick Kurtz  
Nicholas A. Kurtz